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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/086,733	03/04/2002	Benjamin G. Cruz	CRUZ-0001	2199

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EXAMINER

MEINECKE DIAZ, SUSANNA M

ART UNIT	PAPER NUMBER
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3623

DATE MAILED: 10/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/086,733

Applicant(s)

CRUZ, BENJAMIN G.

Examiner

Susanna M. Diaz

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 March 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 March 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>9/28/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-30 are presented for examination.

Specification

2. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

3. The abstract of the disclosure is objected to because it is too long. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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5. Claims 1-10, 13-25, and 28-30 are rejected under 35 U.S.C. 102(e) as being anticipated by Kaufman (U.S. Patent No. 7,062,457).

Kaufman discloses a system for collecting expressions of consumer demand for performances and making the data available to customers to support performance decisions, said system comprising:

[Claim 16] means for receiving data from consumers including votes indicating consumer demand for a performance (col. 5, lines 61-65; col. 7, lines 10-34; col. 12, lines 35-44 -- The transaction server receives a request for purchase of Participation Trust Units corresponding to a user selected entertainment production(s), which includes motions pictures, television, cable programming, music, videos, video games, and all forms of digital programming. The Participation Trust Units are units of investment in a particular entertainment production(s); therefore, by purchasing a selected Participation Trust Unit, a user is effectively giving a vote of trust to the success of the entertainment production(s) and the user is expressing a demand in investing in the entertainment production(s), or performance(s). Furthermore, the more Participation Trust Units a user purchases, the more "votes" the user is effectively casting);

a database for housing collected data (col. 11, lines 57-63); and

means for providing of non-personal consumer data from the database to customers to support decisions to present entertainment performances (Figs. 4, 5 -- The user is presented with information, including a prospectus, regarding the entertainment production(s) to be invested in);

[Claim 17] wherein said means for receiving data from consumers further comprises:

means for receiving data from consumers indicating consumer demand for a consumer desired general locale for the performance (col. 9, lines 41-52; col. 10, lines 60-61 -- The user is kept informed regarding box office performance of Output Films and the market for an Output Film may be set in a given geographical area, such as the U.S. and Canadian box offices; col. 10, lines 32-40 -- Users may also be given the opportunity to travel to Hollywood, receive premiere invitations and screening tickets, earn walk-on roles, studio passes, and show tickets. Additionally, it should be noted that the specific type of data received from the consumers (e.g., regarding a desired general locale for the performance) is non-functional descriptive material and is not functionally involved in the steps recited nor does it alter the recited structural elements; therefore, such differences do not effectively serve to patentably distinguish the claimed invention over the prior art. The recited method steps would be performed the same regardless of the specific data. Further, the structural elements remain the same regardless of the specific data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP § 2106);

[Claim 18] wherein said means for providing of non-personal consumer data from the database to customers to support decisions to present entertainment performances includes means for providing consumer demand data for a consumer desired general locale for the performance so as to support customer decisions to present entertainment

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performances at optimal locales (col. 9, lines 41-52; col. 10, lines 60-61 -- The user is kept informed regarding box office performance of Output Films and the market for an Output Film may be set in a given geographical area, such as the U.S. and Canadian box offices; col. 10, lines 32-40 -- Users may also be given the opportunity to travel to Hollywood, receive premiere invitations and screening tickets, earn walk-on roles, studio passes, and show tickets. Additionally, it should be noted that the specific type of data received from the consumers (e.g., regarding a desired general locale for the performance) is non-functional descriptive material and is not functionally involved in the steps recited nor does it alter the recited structural elements; therefore, such differences do not effectively serve to patentably distinguish the claimed invention over the prior art. The recited method steps would be performed the same regardless of the specific data. Further, the structural elements remain the same regardless of the specific data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP § 2106);

[Claim 19] wherein said means for providing of non-personal consumer data from the database to customers to support decisions to present entertainment performances includes means for analyzing and sorting consumer data and formatting analyzed and sorted consumer data for reporting (col. 10, lines 60-62 -- Box office performance, old reviews, and new reviews are indicative of consumer data. It should be noted that the

“consumer data” does not reference any previous recitation of “consumer data” and therefore may be data referring to any consumer);

[Claim 20] wherein said means for receiving data from consumers further comprises:

means for receiving consumer contact data from consumers (col. 12, line 57 through col. 13, line 13; col. 13, lines 30-44 -- In order to be able to communicate with the consumer, contact data must be received from the consumer, even if the contact data is nothing more than an e-mail address or network location);

[Claim 21] means for receiving data from consumers from supplementary survey forms to provide demographic, contact, opinion and personal preference data (col. 5, lines 61-65; col. 7, lines 10-34; col. 12, lines 35-44 -- The transaction server receives a request for purchase of Participation Trust Units corresponding to a user selected entertainment production(s), which signifies a user's personal preference for investment. While Kaufman does not expressly teach the receipt of supplementary survey forms to provide demographic, contact, and opinion data, it should be noted that the specific type of data received from the consumers is non-functional descriptive material and is not functionally involved in the steps recited nor does it alter the recited structural elements; therefore, such differences do not effectively serve to patentably distinguish the claimed invention over the prior art. The recited method steps would be performed the same regardless of the specific data. Further, the structural elements remain the same regardless of the specific data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, *see In re*

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Gulack, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP § 2106);

[Claim 22] means for storing, in the database, details of entertainment events which have been scheduled (col. 10, lines 13-44, 50-62); and

means for sending message to consumers that a requested performance has been scheduled (col. 10, lines 13-44, 50-62 -- The claim does not specify who has requested the scheduled performance);

[Claim 23] means for receiving, from an advertiser, specifications for consumer targeting (col. 10, lines 12-44 -- The Affiliated Website and/or the Participating Entertainment Companies can target the participating users, or actual "individual investors," with various promotions, such as tickets for premieres and movies screenings, walk-on roles, studio passes, etc.; col. 16, lines 14-32 -- A user selects a Participation Trust Unit of interest corresponding to a selected entertainment production. When the user links to an Affiliated Website, the Affiliated Website targets the user with merchandise related to the selected entertainment product; therefore, the Affiliated Website effectively has enough information to target the specific consumers based on their selected entertainment production. The system must maintain a record of who the individual investors are in order to target them with entertainment production related promotions);

means for analyzing the database to identify the specific consumers matching the advertiser specifications (col. 10, lines 12-44 -- The Affiliated Website and/or the Participating Entertainment Companies can target the participating users, or actual

“individual investors,” with various promotions, such as tickets for premieres and movies screenings, walk-on roles, studio passes, etc.; col. 16, lines 14-32 -- A user selects a Participation Trust Unit of interest corresponding to a selected entertainment production. When the user links to an Affiliated Website, the Affiliated Website targets the user with merchandise related to the selected entertainment product; therefore, the Affiliated Website effectively has enough information to target the specific consumers based on their selected entertainment production. The system must maintain a record of who the individual investors are in order to target them with entertainment production related promotions); and

means for sending marketing messages to the specific consumers (col. 10, lines 12-44 -- The Affiliated Website and/or the Participating Entertainment Companies can target the participating users, or actual “individual investors,” with various promotions, such as tickets for premieres and movies screenings, walk-on roles, studio passes, etc.; col. 16, lines 14-32 -- A user selects a Participation Trust Unit of interest corresponding to a selected entertainment production. When the user links to an Affiliated Website, the Affiliated Website targets the user with merchandise related to the selected entertainment product; therefore, the Affiliated Website effectively has enough information to target the specific consumers based on their selected entertainment production. The system must maintain a record of who the individual investors are in order to target them with entertainment production related promotions);

[Claim 24] means for sending messages to consumers offering at least one of goods and services associated with at least one of the performance, the performer(s), and

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parties to which the consumer has agreed to be solicited from (col. 13, lines 29-44; col. 16, lines 26-53; col. 17, lines 1-5 -- The user signs an agreement accepting all of the terms of the program);

[Claim 25] means for sending consumer contact information to performers, if permitted by consent of consumer (col. 10, lines 12-44; col. 17, lines 1-5 -- By agreeing to participate as an investor, the user accepts the condition of how the program is run. Investors may be given tickets to premieres, shows, etc. and even be given the opportunity to do walk-on roles. If a user does a walk-on role, it is understood that the performers in the entertainment production sponsoring the walk-on role are provided with the user's contact information at some point);

[Claim 28] wherein consumer data is received over a network, the means for receiving consumer data further comprising:

means for voting, by a consumer using a voting form presented to the consumer by activation of at least one of a hyperlink and menu selection incorporated on at least one of a web site and an electronic, web-based media player (Fig. 4; col. 7, lines 21-26; col. 11, lines 50-56; col. 13, lines 41-45; col. 14, lines 37-42 -- Communications are conducted via the Internet and users may be presented with film clips or interviews with movie stars, which would require the use of a web-based media player);

[Claim 29] wherein the voting is conducted via digital media devices connected to wireless networks (col. 11, lines 6-16 -- The client device may include "handheld personal digital assistants with wireless capability...and cellular phones");

[Claim 30] wherein the voting is conducting via any voice-enabled information input and access device (col. 11, lines 6-16 -- The client device may include "voice recognition equipment for converting spoken words to digital data").

[Claims 1-10, 13-15] Claims 1-10 and 13-15 recite limitations already addressed by the rejection of claims 16-25 and 28-30 above; therefore, the same rejection applies.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 11, 12, 26, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaufman (U.S. Patent No. 7,062,457), as applied to claims 7 and 22 above.

[Claims 26, 27] Kaufman does not expressly teach means for providing consumer demand, demographic and preference data, in aggregate form, to customers for market analysis (claim 26) and means for using contact information, geographic, demographic and preference data to formulate targeted survey panels for the conducting of custom research projects on behalf of third parties (claim 27). However Kaufman does provide information about Output Films, such as box office performance, old reviews, new reviews, and historical box office data. Official Notice is taken that it is old and well-

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known in the art of market research for a third party entity to analyze box office statistics based on such factors as consumer demand, demographic and preference data in order to track the correlation between certain types of movies and various audiences.

Additionally, Official Notice is taken that it is old and well-known in the art of market research to assemble survey panels selected based on contact information, geographic, demographic and preference data for conducting research projects on behalf of third parties. Such survey panels may be useful in assessing future film releases so that a production company can try to select more profitable projects and better market films for release in the future. Since Kaufman is concerned with attracting investors for various entertainment productions, including films, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Kaufman to incorporate means for providing consumer demand, demographic and preference data, in aggregate form, to customers for market analysis (claim 26) and means for using contact information, geographic, demographic and preference data to formulate targeted survey panels for the conducting of custom research projects on behalf of third parties (claim 27) in order to help track the correlation between certain types of movies and various audiences and facilitate more accurate assessment of future film releases so that a production company can try to select more profitable projects and better market films for release in the future.

[Claims 11, 12] Claims 11 and 12 recite limitations already addressed by the rejection of claims 26 and 27 above; therefore, the same rejection applies.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Chacker (U.S. Patent No. 6,578,008) -- Discloses a method and system for managing an online talent business in which users can vote for their favorite performers.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susanna M. Diaz whose telephone number is (571) 272-6733. The examiner can normally be reached on Monday-Friday, 8 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Susanna M. Diaz
Primary Examiner
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October 2, 2006